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Before the  
FEDERAL COMMUNICATIONS COMMISSION

In the Matter of )

Policy and Rules Concerning the )  
Interstate, Interexchange Marketplace )

Federal Communications Commission  
Office of Secretary

CC Docket No. 96-61

DOCKET FILE COPY ORIGINAL

COMMENTS OF MFS COMMUNICATIONS COMPANY, INC.  
IN SUPPORT OF  
MOTION FOR STAY PENDING JUDICIAL REVIEW

MFS Communications Company, Inc. ("MFS"), by and through its undersigned counsel, hereby files these comments in support of the Motion for Stay Pending Judicial Review ("Motion") of the Second Report and Order<sup>1/</sup> herein filed by MCI Telecommunications Corporation ("MCI") on December 18, 1996. MCI filed a petition for review of the Order with the D.C. Circuit on December 2, 1996.

MCI seeks a stay until the Court of Appeals has had the opportunity to pass on the Order's validity. As MCI notes, the effect of the Order would be to wholly change the way MCI and all other interexchange carriers do business with the vast majority of their customers. There is no question that this sea change, in the way in which IXCs relate to their customers, carries with it significant costs and significant risks. The use of tariffs provides an understood and unified set of rules and protections for both the carriers and their customers. As MCI notes in the Motion, the elimination of tariffs calls into question the continued viability of such rules and protections. Motion at 15. It may well be that state contract and consumer protection laws will govern the carriers' relationship with their customers. Id. But, the nature and extent of the applicability of such state laws to the carrier/customer relationship is, as MCI points out, uncertain, leaving MFS

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<sup>1/</sup> Adopted October 31, 1996, and released November 22, 1996, 61 Fed. Reg. 59,340 ("Order").

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in the untenable position of varied and uncertain exposure while the Order is under judicial review. Further, as MFS detailed in its comments and reply comments in this proceeding, the resources necessary to deal with such changes will be substantial, and the expenditure of such resources wholly unnecessary if the Order is ultimately overturned on appeal. This result will be avoided if the Order is stayed as MCI has requested.

Just as there is no question that this sea change in business practice will result in significant costs and risks for IXCs, it is equally clear that there will be no harm to consumers or the general public if the historical relationship between carriers and the public remains in place pending judicial review. To the extent that there is any benefit to the public of the mandatory elimination of the possibility of continuing to use tariffs -- a dubious premise -- the harm will in no way compare to the clear and certain harm to IXCs which will result if the Order is not stayed.

Given the high likelihood of significant customer confusion resulting from the need to enter into a contractual relationship with their IXC, and the further confusion which will occur if the Order is subsequently overturned, there can be little doubt that the public interest is well served by the grant of a stay. The fact of customer confusion is one of the certain results of the Order. This confusion is heightened by the fact that, while the customer will need to have a contract for interstate toll service, intrastate toll service will, in many cases, continue to be the subject of tariff. There simply is no corresponding consumer benefit which will be negatively affected by a stay of the Order pending appeal.

For these reasons, and for the reasons set forth in MCI's Motion, MFS urges the Commission to grant the Motion and stay the effectiveness of its Order pending judicial review.

Respectfully submitted,

Dated: December 26, 1996



Andrew D. Lipman

Richard Rindler

SWIDLER & BERLIN, Chtd.

3000 K Street, NW, Suite 300


Washington, D.C. 20007

(202) 424-7500

Counsel for MFS Communications  
Company, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 26th day of December 1996, copies of the foregoing  
COMMENTS OF MFS COMMUNICATIONS COMPANY, INC. IN SUPPORT OF MOTION  
FOR STAY PENDING JUDICIAL REVIEW, CC Docket No. 96-61, were sent via  
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list.

  
KATHERINE A. SWALL

WILLIAM F. CATON, SECRETARY\*\*  
FEDERAL COMMUNICATIONS COMMISSION  
1919 M STREET, N.W., ROOM 222  
WASHINGTON, D.C. 20554

JAMES D. SCHLICHTING, CHIEF\*\*  
TARIFF DIVISION  
FEDERAL COMMUNICATIONS COMMISSION  
1919 M STREET, N.W., ROOM 518  
WASHINGTON, D.C. 20554

REGINA KEENEY, CHIEF\*\*  
COMMON CARRIER BUREAU  
FEDERAL COMMUNICATIONS COMMISSION  
1919 M STREET, N.W., ROOM 500  
WASHINGTON, D.C. 20554

KATHLEEN LEVITZ, DEPUTY CHIEF\*\*  
COMMON CARRIER BUREAU  
FEDERAL COMMUNICATIONS COMMISSION  
1919 M STREET, N.W., ROOM 500  
WASHINGTON, D.C. 20554

JANICE MYLES\*\*  
COMMON CARRIER BUREAU  
FEDERAL COMMUNICATIONS COMMISSION  
1919 M STREET, N.W., ROOM 544  
WASHINGTON, D.C. 20554

INTERNATIONAL TRANSCRIPTION SERVICES\*\*  
FEDERAL COMMUNICATIONS COMMISSION  
1919 M STREET, N.W., ROOM 246  
WASHINGTON, D.C. 20554

DR. ROBERT SELF  
4641 MONTGOMERY AVENUE, SUITE 515  
BETHESDA, MARYLAND 20814-3488  
DR. ROBERT SELF d/b/a/ MARKET DYNAMICS

GAYLE T. KELLNER  
P.O. BOX 91154  
BATON ROUGE, LOUISIANA 70821-9154  
LOUISIANA PUBLIC SERVICE COMMISSION

CATHERINE R. SLOAN  
RICHARD L. FRUCHTERMAN  
1120 CONNECTICUT AVENUE, N.W., SUITE 400  
WORLDCOM, INC. d/b/a LDDS WORLDCOM,  
INC.

ROBERT J. AAMOTH  
JONATHAN CANIS  
REED SMITH SHAW & MCCLAY  
1301 K STREET, N.W., EAST TOWER, SUITE 1100  
WASHINGTON, D.C. 20005  
LCI INTERNATIONAL TELECOM CORP.

JOSEPH P. MARKOSKI  
MARC BEREJKA  
SQUIRE, SANDERS & DEMPSEY  
1201 PENNSYLVANIA AVENUE, N.W.  
P.O. BOX 407  
WASHINGTON, D.C. 20044  
**INFORMATION TECHNOLOGY ASSOCIATION  
OF AMERICA**

GAIL L. POLIVY  
1850 M STREET, N.W., SUITE 1200  
WASHINGTON, D.C. 20036  
**GTE SERVICE CORPORATION AND ITS  
AFFILIATES DOMESTIC TELEPHONE AND IXC  
COMPANIES**

CHARLES P. FEATHERSTUN  
DAVID G. RICHARDS  
1133 21ST STREET, N.W.  
WASHINGTON, D.C. 20036  
**BELLSOUTH**

MARK C. ROSENBLUM  
ROY E. HOFFINGER  
AVA B. KLEINMAN  
RICHARD H. RUBIN  
ROOM 3244J1  
295 NORTH MAPLE AVENUE  
BASKING RIDGE, NEW JERSEY 07920  
**AT&T**

BETTYE GARDNER  
1407 14TH STREET, N.W.  
WASHINGTON, D.C. 20005-3704  
**THE ASSOCIATION FOR THE STUDY  
OF AFRO-AMERICAN LIFE AND HISTORY, INC.**

JONATHAN J. NADLER  
SQUIRE, SANDERS & DEMPSEY  
1201 PENNSYLVANIA AVENUE, N.W.  
P.O. BOX 407  
WASHINGTON, D.C. 20044  
**INDEPENDENT DATA COMMUNICATIONS  
MANUFACTURERS ASSOCIATION**

JOHN F. BEASLEY  
WILLIAM B. BARFIELD  
JIM O. LLEWELLYN  
1155 PEACHTREE STREET, NE, SUITE 1800  
ATLANTA, GA 30309-2641  
**BELLSOUTH**

EDWARD SHAKIN  
1320 NORTH COURT HOUSE ROAD  
EIGHTH FLOOR  
ARLINGTON, VA 22201  
**BELL ATLANTIC**

DAVID W. CARPENTER  
ONE FIRST NATIONAL PLAZA  
CHICAGO, ILLINOIS 60603  
**AT&T**

GLENN S. RICHARDS  
FISHER WAYLAND COOPER  
LEADER & ZARAGOZA L.L.P.  
2001 PENNSYLVANIA AVENUE, N.W.  
SUITE 400  
WASHINGTON, D.C. 20006  
**AMSC and ATC**

LON C. LEVIN  
VICE PRESIDENT AND REGULATORY COUNSEL  
AMSC SUBSIDIARY CORPORATION  
10802 PARK RIDGE BOULEVARD  
RESTON, VIRGINIA 22091

GARY L. PHILLIPS  
1401 H STREET, N.W., SUITE 1020  
WASHINGTON, D.C. 20005  
**AMERITECH**

CHARLES H. HELEIN  
HELEIN & ASSOCIATES, P.C.  
8180 GREENSBORO DRIVE, SUITE 700  
MCLEAN, VIRGINIA 22102  
**ACTA**

ALBERT H. KRAMER  
ROBERT F. ALDRICH  
DICKSTEIN, SHAPIRO & MORIN, L.L.P.  
2101 L STREET, N.W.  
WASHINGTON, D.C. 20037-1526  
**AMERICAN PUBLIC COMMUNICATIONS  
COUNCIL**

WAYNE V. BLACK  
C. DOUGLAS JARRETT  
SUSAN M. HAFELI  
BRIAN TURNER ASHBY  
1001 G STREET, N.W.  
SUITE 500 WEST  
WASHINGTON, D.C. 20001  
**AMERICAN PETROLEUM INSTITUTE**

ELLEN G. BLOCK  
LEVINE, VLASZAK, BLOCK & BOOTHBY  
1300 CONNECTICUT AVENUE, N.W., SUITE 500  
WASHINGTON, D.C. 20036  
**AD HOC TELECOMMUNICATIONS USERS  
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CLEARING HOUSE ASSOC., THE NY CLEARING  
HOUSE ASSOC., ABB BUS. SVCS., PRUDENTIAL**

RODNEY L. JOYCE  
GINSBURG, FELDMAN & BRESS  
1250 CONNECTICUT AVENUE, N.W.  
WASHINGTON, D.C. 20036  
**AD HOC COALITION OF CORPORATE  
TELECOMMUNICATIONS MANAGERS**

MICHAEL G. HOFFMAN  
VARTEC TELCOM, INC.  
3200 W. PLEASANT RUN ROAD  
LANCASTER, TX 75146  
**CASUAL CALLING COALITION**

NATALIE MARINE-STREET  
TELCO COMMUNICATIONS GROUP, INC.  
LONG DISTANCE WHOLESALE CLUB  
4219 LAFAYETTE CENTER DRIVE  
CHANTILLY, VA 22021  
**CASUAL CALLING COALITION**

MICHAEL J. ETTNER  
GENERAL SERVICES ADMINISTRATION  
18TH & F STREETS, N.W., ROOM 4002  
WASHINGTON, D.C. 20405  
**GSA**

KATHY L. SHOBERT  
901 15TH STREET, N.W.  
SUITE 900  
WASHINGTON, D.C. 20005  
**GENERAL COMMUNICATION, INC.**

MICHAEL J. SHORTLEY, III  
180 SOUTH CLINTON AVENUE  
ROCHESTER, NY 14646-0700  
**FRONTIER**

STUART ZIMMERMAN  
GENERAL MANAGER  
733 SUMMER STREET, SUITE 306  
STAMFORD, CT 06901-1019  
**FONE SAVER, LLC**

THOMAS K. CROWE  
LAW OFFICES OF THOMAS K. CROWE, P.C.  
2300 M STREET, N.W., SUITE 800  
WASHINGTON, D.C. 20037  
**EXCEL TELECOMMUNICATIONS, INC.**

BRADLEY STILLMAN  
1424 16TH STREET, N.W., SUITE 604  
WASHINGTON, D.C. 20036  
**CONSUMER FEDERATION OF AMERICA**

JOHN W. PETTIT  
DRINKER BIDDLE & REATH  
901 15TH STREET, N.W.  
WASHINGTON, D.C. 20005  
**CONSUMER ELECTRONICS RETAILERS  
COALITION**

ALBERT SHULDINER  
VINSON & ELKINS  
1455 PENNSYLVANIA AVENUE, N.W.  
WASHINGTON, D.C. 20004-1008  
**COMPAQ COMPUTER CORPORATION**

WAYNE LEIGHTON  
JAMES GATTUSO  
1250 H STREET, N.W., SUITE 700  
WASHINGTON, DC 20005  
**CITIZENS FOR FOUND ECONOMY  
FOUNDATION**

WINSTON R. PITTMAN  
27777 FRANKLIN ROAD  
SOUTHFIELD, MI 48034  
**CHRYSLER MINORITY DEALERS  
ASSOCIATION**

RANDOLPH J. MAY  
TIMOTHY J. COONEY  
SUTHERLAND, ASBILL & BRENNAN  
1275 PENNSYLVANIA AVENUE, N.W.  
WASHINGTON, D.C. 20004-2404  
**CAPITAL CITIES/ABC, INC., CBS INC.,  
NATIONAL BROADCASTING COMPANY, INC.  
AND TURNER BROADCASTING SYSTEM, INC.**



DANNY E. ADAMS  
EDWARD A. YORKGITIS, JR.  
KELLEY DRYE & WARREN  
1200 19TH STREET, N.W.  
WASHINGTON, D.C. 20036  
**CABLE & WIRELESS, INC.**

CHERYL LYNN SCHNEIDER  
JOAN M. GRIFFIN  
601 PENNSYLVANIA AVENUE, N.W.  
NORTH BUILDING, SUITE 725  
WASHINGTON, D.C. 20004  
**BT NORTH AMERICA, INC.**

EARL PACE  
FOUNDER & CHAIR, LEGISLATIVE COMMITTEE  
12 50 CONNECTICUT AVENUE, N.W.  
SUITE 600  
WASHINGTON, D.C. 20036  
**BLACK DATA PROCESSING ASSOCIATION**

EILEEN SEIDOWITZ  
AUDITS UNLIMITED, INC.  
139-15 83RD AVENUE  
BRIARWOOD, NEW YORK 11435  
**AUDITS UNLIMITED, INC.**

WILLIAM H. WELLING  
577 AIRPORT BOULEVARD, SUITE 700  
BURLINGAME, CA 94010  
**XIOX CORPORATION**

JEFFREY L. SHELDON  
SEAN A. STOKES  
1140 CONNECTICUT AVENUE, N.W.  
WASHINGTON, D.C. 20036  
**UTC**

ROBERT B. MCKENNA  
COLEEN M. EGAN HELMREICH  
SUITE 700  
1020 19TH STREET, N.W.  
SUITE 700  
WASHINGTON, D.C. 20036  
**U S WEST, INC.**

MARY MCDERMOTT  
LINDA KENT  
CHARLES D. COSSON  
1401 H STREET, N.W., SUITE 600  
WASHINGTON, D.C. 20005  
**UNITED STATES TELEPHONE ASSOCIATION**

CHARLES C. H UNTER  
HUNTER & MOW, P.C.  
1620 I STREET, N.W.  
SUITE 701  
WASHINGTON, D.C. 20006  
**TELECOMMUNICATIONS RESELLERS  
ASSOCIATION**

SAMUEL A. SIMON  
901 15TH STREET, N.W., SUITE 230  
WASHINGTON, D.C. 20005  
**TELECOMMUNICATIONS RESEARCH AND  
ACTION CENTER**

CHERYL A. TRITT  
JOAN E. NEAL  
MORRISON & FOERSTER  
2000 PENNSYLVANIA AVENUE, N.W., SUITE 500  
WASHINGTON, D.C. 20006  
**TELECOMMUNICATIONS MANAGEMENT  
INFORMATION SYSTEMS COALITION**

WILLIAM B. GODDARD  
4613 WEST CHESTER PIKE  
NEWTON SQUARE, PENNSYLVANIA 19073  
**TELECOMMUNICATIONS INFORMATION  
SERVICES**

ROBERT M. HALPERIN  
CROWELL & MORING  
1001 PENNSYLVANIA AVENUE, N.W.  
WASHINGTON, D.C. 20004  
**THE STATE OF ALASKA**

LEON M. KESTENBAUM  
JAY C. KEITHLEY  
1850 M STREET, N.W., 11TH FLOOR  
WASHINGTON, D.C. 20036  
**SPRINT CORPORATION**

PAUL R. SCHWEDLER  
CARL WAYNE SMITH  
TELECOMMUNICATIONS, DOD  
DEFENSE INFORMATION SYSTEMS AGENCY  
701 S. COURTHOUSE ROAD  
ARLINGTON, VA 22204  
**THE SECRETARY OF DEFENSE**

JAMES D. ELLIS  
ROBERT M. LYNCH  
DAVID F. BROWN  
175 E. HOUSTON ROOM 1254  
SAN ANTONIO, TEXAS 78205  
**SBC COMMUNICATIONS**

ALAN KOHLER  
VERONICA A. SMITH  
JOHN F. POVILAITIS  
P.O. BOX 3265  
HARRISBURG, PA 17105-3265  
**COUNSEL FOR PENNSYLVANIA PUBLIC  
UTILITY COMMISSION**

MARLIN D. ARD  
JOHN W. BOGY  
140 NEW MONTGOMERY STREET  
ROOM 1530A  
SAN FRANCISCO, CALIFORNIA 94105  
**PACIFIC TELESIS GROUP**

DAVID C. BERGMANN  
77 SOUTH HIGH STREET, 15TH FLOOR  
COLUMBUS, OHIO 43266-0550  
**THE OFFICE OF THE OHIO CONSUMERS'  
COUNSEL**

CAMPBELL L. AYLING  
DONALD C. ROWE  
1111 WESTCHESTER AVENUE  
WHITE PLAINS, NEW YORK 10604  
**NYNEX TELEPHONE COMPANIES**

ALICEANN WOHLBRUCK  
444 NORTH CAPITOL STREET  
SUITE 630  
WASHINGTON, D.C. 20001  
**NATIONAL ASSOCIATION OF DEVELOPMENT  
ORGANIZATIONS**

JOHN ABERNATHY  
45 EXECUTIVE DRIVE  
SUITE GL 3  
PLAINVIEW, NY 11803  
**NETWORK ANALYSIS CENTER, INC.**

ROBERT L. BOXER  
3750 MONROE AVENUE  
PITTSFORD, NY 14534  
**MOSCOM CORPORATION**

DONALD J. ELARDO  
FRANK W. KROGH  
LARRY A. BLOSSER  
MARY J. SISAK  
1801 PENNSYLVANIA AVENUE, N.W.  
WASHINGTON, D.C. 20006  
**MCI TELECOMMUNICATIONS CORPORATION**

MARGARET E. GARBER  
1275 PENNSYLVANIA AVENUE, N.W.  
WASHINGTON, D.C. 20004  
**PACIFIC TELESIS GROUP**

S. JOSEPH DORR, VICE PRESIDENT  
209 PERRY PARKWAY  
GAITHERSBURG, MD 20877  
**AMERICAN COMPUTER AND ELECTRONICS  
CORPORATION**

MICHAEL GREENSPAN  
370 LEXINGTON AVENUE  
NEW YORK, NY 10017  
**MBG**

JEFFREY A. CAMPBELL, MANAGER  
FEDERAL GOVERNMENT AFFAIRS  
1300 I STREET, N.W., SUITE 490E  
WASHINGTON, D.C. 20005  
**COMPAQ COMPUTER CORPORATION**

JOHN CRUMP, EXECUTIVE DIRECTOR  
1225 11TH STREET, N.W.  
WASHINGTON, D.C. 20001-4217  
**NATIONAL BAR ASSOCIATION**

ANN P. MORTON  
8219 LEESBURG PIKE  
VIENNA, VA 22182  
**CABLE & WIRELESS, INC.**

---

**GENEVIEVE MORELLI, EXECUTIVE VICE  
PRESIDENT AND GENERAL COUNSEL  
1900 M STREET, N.W., SUITE 800  
WASHINGTON, D.C. 20036  
COMPETITIVE TELECOMMUNICATIONS  
ASSOCIATION**

**LEE M. WEINER  
DOUGLAS W. KINKOPH  
8180 GREENSBORO DRIVE, SUITE 800  
MCLEAN, VA 22102  
LCI INTERNATIONAL TELECOM CORP.**

**SUSAN DROMBETTA, MANAGER  
- RATES AND TARIFFS  
575 SHERERS COURT  
WORTHINGTON, OH 43085  
SCHERERS COMMUNICATIONS GROUP, INC.**

**CHARLENE VANLIER  
21 DUPONT CIRCLE, 6TH FLOOR  
WASHINGTON, D.C. 20036  
CAPITAL CITIES/ABC, INC.**

**HOWARD MONDERER  
1299 PENNSYLVANIA AVENUE, N.W.  
11TH FLOOR  
WASHINGTON, D.C. 20004  
NATIONAL BROADCASTING COMPANY, INC.**